

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ANTHONY JOHN WERGEN,

Plaintiff,

-against-

ORDER
20-CV-3558 (JS)

ANDREW SAUL, COMMISSIONER OF
SOCIAL SECURITY,

Defendant.

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APPEARANCES

For Plaintiff: Darlene Rosch, Esq.
Nassau/Suffolk Law Services Committee, Inc.
1757 Veterans Highway, Ste. 50
Islandia, New York 11749

For Defendant: No Appearance

SEYBERT, District Judge:

On August 6, 2020, plaintiff Anthony John Wergen ("Plaintiff") filed a Complaint against the Commissioner of Social Security seeking review of the decision of the Administrative Law Judge pursuant to Section 205(g) of the Social Security Act, as amended, 42 U.S.C. § 405(g), together with an application to proceed in forma pauperis.¹ For the reasons that follow, the

¹ In addition, Plaintiff filed a proposed order but did not include summonses. Counsel is advised that on March 2, 2020, the Commissioner of Social Security filed a notice in the Federal Register setting forth the names and current addresses for service of process on the Commissioner in disability cases for each United States District Court. See <https://www.Federalregister.gov/documents/2020/03/02/2020-04246/notice-announcing-addresses-for-service-of-process>. The Notice announced that service of process for the Eastern District of New York was directed to be made upon the Regional Chief Counsel's Office in Kansas City, Missouri.

application to proceed in forma pauperis is DENIED WITHOUT PREJUDICE and with leave to renew upon completion of the AO 239 in forma pauperis application form. Alternatively, Plaintiff may remit the \$400.00 filing fee.

Rather than complete the Court's form in forma pauperis application, Plaintiff has provided a notarized statement that does not include sufficient information to assess Plaintiff's financial position. (See IFP Mot., D.E. 2.) For example, Plaintiff does not report whether he has any cash, whether he has any dependents, and whether he has any debts. Nor does Plaintiff report any regular monthly expenses such as rent, utilities, transportation, etc. Although he reports receiving public assistance in the amount of \$190/month in Supplemental Nutrition Assistance Program (SNAP) benefits and \$180/month in "cash assistance" from the Department of Social Services, without a complete report of expenses, the Court is unable to conclude that Plaintiff's financial status qualifies him to proceed in forma pauperis. (See IFP Mot., ¶¶ 7-8.) Accordingly, Plaintiff's application is DENIED WITHOUT PREJUDICE to a renewal thereof upon completion of the AO 239 in forma pauperis application form annexed to this Order. Under the circumstances, Plaintiff can best set forth his current financial position on the long form in forma pauperis application (AO 239). Plaintiff is directed to either

remit the \$400.00 filing fee or complete and return the enclosed in forma pauperis application within fourteen (14) days from the date of this Order. Plaintiff is cautioned that a failure to timely comply with this Order will lead to the dismissal of the Complaint without prejudice and judgment will enter.

The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith and therefore in forma pauperis status is denied for the purpose of any appeal. See Coppedge v. United States, 369 U.S. 438, 444-45, 82 S. Ct. 917, 8 L. Ed. 2d 21 (1962).

The Clerk of Court is directed to include the AO 239 in forma pauperis application form with this Order.

SO ORDERED.

/s/ JOANNA SEYBERT
Joanna Seybert, U.S.D.J.

Dated: October 5, 2020
Central Islip, New York